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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,379

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Raymond John Bacon

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EXAMINER

SHEARER, DANIEL R

ART UNIT

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12/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,379	Applicant(s) BACON, RAYMOND JOHN	
	Examiner DANIEL R. SHEARER	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-11,13,14 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-11,13,14 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/13/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 9, 11, 13 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,098,291 to Curtis et al. (Curtis).

Curtis shows a dispenser (Fig. 1) for a medicament and propellant (see abstract), comprising a release valve (Col. 5, ll. 55-58) and a reservoir (11) that includes a major portion (adjacent 37) having a comparatively large cross-section of its substance space and a minor portion (bottom of 11 in Fig. 4) having a comparatively small cross-section of its substance space. The reservoir is transparent (Col. 5, ll. 46-47) and the minor portion is the opposite end of the source from the release valve (Fig. 4) so that a user holding the dispenser valve up can observe the level of the substance in the minor portion and can note a comparatively rapid depletion with use of the quantity of substance remaining when the source approaches exhaustion of the substance (inherent based on shape and transparency of 11).

Regarding claim 3, Curtis shows that the minor portion of the reservoir has a progressively diminishing cross-section (see Fig. 4).

Regarding claim 9, Curtis discloses that the reservoir is formed of transparent plastics material (Col. 7, ll. 22-23).

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Regarding claims 11 and 13, Curtis shows the reservoir provided with an insert (34) with a uniform cross-section that substantially reduces the cross-section of the reservoir (Fig. 4).

Regarding claim 17, Curtis discloses that the reservoir is transparent at the minor portion at least (Col. 5, ll. 46-47).

3. Claims 1, 3, 6, 7, 11, 14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,184,115 to Meshberg.

Meshberg shows an aerosol dispenser (Col. 1, ll. 7-10), comprising a release valve (11) and a reservoir (10) that includes a major portion (as indicated by leader for element 10 in Fig. 1) having a comparatively large cross-section of its substance space and a minor portion (bottom of 10 in Fig. 1, adjacent 17) having a comparatively small cross-section of its substance space (reservoir 11 gradually curves inward before bottom to create a comparatively small cross-section). The reservoir is transparent (Col. 2, ll. 52-57) and the minor portion is the opposite end of the source from the release valve (Fig. 1) so that a user holding the dispenser valve up can observe the level of the substance in the minor portion and can not a comparatively rapid depletion with use of the quantity of substance remaining when the source approaches exhaustion of the substance (inherent based on shape and transparency of 10).

Regarding claim 3, Meshberg shows that the minor portion of the reservoir has a progressively diminishing cross-section (see Fig. 1).

Regarding claim 6, Meshberg discloses that the reservoir is formed of glass (Col. 2, ll. 28-31).

Regarding claim 7, Meshberg shows that the glass reservoir is enclosed in a plastics material sheath (14, Col. 2, ll. 39-40).

Regarding claims 11 and 14, Meshberg shows the reservoir provided with a tapered insert (11) that substantially reduces the cross-section of the reservoir.

Regarding claim 17, Meshberg discloses that the reservoir is transparent at the minor portion at least (Col. 2, ll. 52-57).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,506,004 to Mann et al. (Mann) in view of U.S. Patent No. 4,896,832 to Howlett.

Mann shows an aerosol medicament dispenser (Col. 1, ll. 11-14), comprising a release valve (Col. 2, ll. 11-14) and a reservoir (20) that includes a major portion (as indicated by number 20 in Fig. 3) having a comparatively large cross-section of its substance space and a minor portion (surrounding 45 in Fig. 3) having a comparatively small and constant cross-section of its substance space (see Fig. 3). The minor portion

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is the opposite end of the source from the release valve (Fig. 3). The reservoir is enclosed by a robust impermeable outer enclosure (21, Col. 3, ll. 21-24).

Mann fails to disclose that the reservoir is translucent or transparent and made of plastics material.

Howlett shows a dispensing apparatus comprising a pressurized dispensing container (3, see abstract) made of a transparent plastics material (Col. 4, ll. 56-58) and an outer enclosure (2) with a transparent window (45) for viewing the level of the contents of container (Col. 5, ll. 58-61). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have manufactured the reservoir and outer enclosure of Mann out of a transparent plastic and with a transparent window as taught by Howlett to allow for viewing of the level of the contents of the container.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meshberg as applied to claim 7 above, and further in view of U.S. Patent No. 6,866,158 to Sommer et al. (Sommer).

Meshberg shows all aspects of the applicant's invention as set forth in claim 7, but fails to disclose that the material sheath is a shrink wrapping or an insert molding. Sommer teaches a glass bottle enclosed in a plastics material sheath by insert molding (Col. 3, ll. 20-25) and discloses that forming the material sheath by insert molding allows for a thinner wall thickness of the glass bottle (Col. 3, ll. 59-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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have formed the material sheath of Meshberg by insert molding as taught by Sommer to allow for a thinner wall thickness of the glass bottle.

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 6-11, 13, 14 and 17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL R. SHEARER whose telephone number is

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(571)270-7416. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. R. S./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754